

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING REQUEST OF TELEPHIA, INC. TO INTERVENE
AND RESOLVING JULY 29, 2002 MOTION TO COMPEL DISCOVERY**

Motion to Intervene: By motion filed August 6, 2002, Telephia, Inc. (Telephia) requests leave to intervene in this proceeding for the limited purpose of protecting information it deems confidential and proprietary. The Commission's Consumer Protection and Safety Division (CPSD) seeks the information in response to Data Request (DR) 1 (drive tests, which are used to determine cellular coverage) and DR 11 (Telephia's contract with Cingular Wireless (Cingular)). The motion states:

Telephia is a privately held company providing information products and services to the wireless industry though [sic] the use of proprietary data collection technologies. Drive tests are one of Telephia's core products, which are created through Telephia's proprietary algorithms and other trade secrets that were developed through years of research and development costing tens of millions

of dollars. The economic value to Telephia of these drive tests derives in large part from the fact that the information contained therein is kept confidential and is only made available to wireless companies willing to spend large sums of money to obtain the confidential information. (Motion, pp.1-2.)

Pursuant to Rule 45(h) and (i), which permit a ruling on a motion before responses have been filed, Telephia's motion to intervene is granted. Telephia shall be listed as an "appearance" on the service list and may participate in this proceeding for the limited purpose of protecting its interests in the information sought in response to DRs 1 and 11. Telephia's additional request, that no ruling issue on the underlying discovery dispute until it has been given leave to brief its confidentiality concerns, is denied; those concerns are addressed, below, in a manner that will not cause Telephia economic harm.

Motion To Compel Discovery: By motion filed July 29, 2002, CPSD seeks an order compelling Cingular to respond to 20 enumerated DRs: 1, 2, 3, 4, 7, 8, 10, 12, 13, 14, 15, 17, 21, 25, 30, 42, 44, 45, 46, and 48. DR 16 is also in dispute, according to the Interim Joint Status Report, which CPSD and Cingular provided by letter, on August 5. The Joint Follow-Up Status Report, provided by letter on August 7, identifies the disputes that remain outstanding. These disputes, identified consistent with the terminology used in the Joint Follow-Up Status Report, shall be resolved as follows:

Non-Disclosure Agreement/Telephia: The Joint Follow-Up Status Report indicates that CPSD has agreed to accept the documents responsive to DRs 1 and 11 with certain redactions to protect information in them that Telephia considers highly confidential. However, the parties are unable to agree upon the terms of a non-disclosure agreement to govern the use of other, unredacted information in the documents. Therefore, on or before August 14, 2002, Telephia

(or jointly, Telephia and Cingular) shall file and serve a motion for a protective order to govern the documents responsive to DRs 1 and 11. The responsive documents, containing the redactions agreed to by in CPSD, shall be filed under seal with the motion. The motion shall include substantiation that the responsive documents are entitled to confidential treatment under the Commission's General Order 66-C and the Public Records Act,¹ in the form of a declaration (or affidavit) to this effect, signed by a corporate officer in accordance with California law.²

California Question/Corporate Decision Memos: Cingular shall respond to DRs 4, 7, 8, 12, 16, 17, and 48 by providing all documents prepared in

¹ If Cingular joins in the motion, the documents may also be subject to protection under Public Utilities Code Section 583.

² Commission protective orders typically include the following provisions:

IT IS RULED that the motion of [name] for a protective order is granted to the extent set forth below:

1. [The documents at issue], which have been filed under seal as an attachment to the motion for protective order, shall remain under seal for a period of two years from the date of this ruling. During that period, the foregoing documents or portions of documents shall not be made accessible or be disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

2. If [name] believes that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

California or provided to Cingular's California management. Considering the burden a national search of documents would entail, Cingular need not perform such a search at this time. Upon receipt and review of responsive documents, CPSD may renew its request for broader discovery and if it does so, shall state its reasons for the renewal.

Voicestream Agreement: Cingular need not produce its June 2002 agreement with Voicestream. Counsel for Cingular represent that the agreement post-dates the issuance of this investigation. Therefore, the relevance of the agreement to this proceeding appears to be marginal, at best.

IT IS RULED that:

1. The August 6, 2002 Motion to Intervene filed by Telephia, Inc. (Telephia) is granted to authorize Telephia to intervene in this proceeding, as an "appearance," for the limited purpose of protecting information it deems confidential and proprietary and is otherwise denied.

2. The July 29, 2002 Motion To Compel Discovery filed by Consumer Protection and Safety Division (CPSD) is granted in part and denied in part, as discussed herein.

3. On or before August 14, 2002, Telephia (or jointly, Telephia and Cingular) shall file and serve a motion for a protective order to govern the documents responsive to DRs 1 and 11, as discussed herein.

Dated August 8, 2002, at San Francisco, California.

/s/ JEAN VIETH

Jean Vieth

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Request of Telephia, Inc. to Intervene and Resolving July 29, 2002 Motion to Compel Discovery on all parties of record in this proceeding or their attorneys of record.

Dated August 8, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.